

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

11/2/81
10.7
42447

IN THE MATTER OF:)	
)	
Aerovox, Inc.)	DOCKET NO.
New Bedford, Massachusetts)	
)	81-964
PROCEEDING UNDER SECTION 106 OF)	
THE COMPREHENSIVE ENVIRONMENTAL)	
RESPONSE, COMPENSATION, AND)	CONSENT ORDER
LIABILITY ACT, 42 U.S.C. §9606)	

PREAMBLE

The following CONSENT ORDER is being issued pursuant to the authority vested in the President by Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9606, and delegated to the Coast Guard by Section 8(f) of Executive Order 12316 (August 14, 1981), and re-delegated by the Coast Guard to EPA, by the Instrument of Redelelegation, signed October 2, 1981, by the Secretary of Transportation, and October 9, 1981, by the Administrator of EPA.

EPA is basing this Order on an inspection conducted by Versar, Inc., an authorized representative of EPA, on June 18, 1981, of a factory owned and operated by Aerovox, Inc., in New Bedford, Massachusetts. In the course of the inspection, Versar took samples from the soil in a yard area outside the factory, on Aerovox property. Versar subsequently reported

the results of its analysis of the soil samples, which indicate the presence of PCBs in the soil of the yard. On the basis of these results, EPA has determined that there may be an imminent and substantial endangerment within the meaning of Section 106 of CERCLA, and, pursuant to its authority under that section, EPA now seeks implementation of the measures called for in the following Order.

Aerovox has agreed to consent to this Order and to implement its terms, with the understanding that by so doing, Aerovox does not waive, for the purposes of any other proceeding brought by EPA or any other person, any defenses which it might have raised to this Order or which it might raise in any other proceeding. Neither Aerovox' consent to this Order, nor anything in this document shall constitute an admission by Aerovox with respect to any factual or legal matter except for the following:

1. Aerovox admits that it is a Massachusetts corporation organized in October, 1978, which owns property located at 760 Belleville Avenue, New Bedford, Massachusetts, and operates a factory thereon; and
2. For the purposes of this Order only, Aerovox admits that EPA has jurisdiction to issue the Order under Section 106 of CERCLA, 42 U.S.C. §9606.

Aerovox specifically denies that there may be an imminent and substantial endangerment, within the meaning of Section 106 of CERCLA, arising from PCBs on Aerovox property. This Consent Order shall be issued without trial or final adjudication on the issue of endangerment or any other issue of fact or law, and Aerovox retains its right to contest allegations concerning endangerments in any other proceeding brought by EPA or any other person.

It is further agreed between EPA and Aerovox that implementation of all the measures called for in this Order, including implementation of an approved course of remedial action, shall constitute a full and final disposition of this proceeding and any proceeding which could have been based on the June 18, 1981, inspection. However, as provided in the Order, in the event of final disapproval of the recommended course of remedial action, EPA retains the right to seek or require further action under Section 106 of CERCLA or any other relevant provisions of law, and Aerovox retains the right to raise any and all defenses, including the right to deny the jurisdiction admitted for the purposes of this Order, in any proceedings or actions brought by EPA or any other persons.

This Order shall apply only to that portion of Aerovox' property lying to the west of the seawall separating the factory grounds from the waters of the Acushnet River estuary

(see Appendix A). Aerovox does not concede any obligation, waive any defenses, or make any admissions with respect to the Acushnet River, New Bedford Harbor, or the conduct of the prior owners of the Aerovox property. EPA retains all rights to seek or require appropriate actions in such locations, pursuant to EPA's authority under any relevant provision of law. EPA also retains all rights against third parties which may arise out of the facts on which this Order is based.

Aerovox and EPA shall use their best efforts in good faith to coordinate the actions required to be taken under this Order with the actions to be taken under the Order issued by the Commonwealth of Massachusetts, Department of Environmental Quality Engineering (DEQE) to Aerovox.

EPA and Aerovox shall make all reasonable efforts to coordinate all actions taken under this Order with other government agencies. Such coordination shall include provision of notice and duplicate samples, upon request.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED:

I. General Conditions

1. Designation of Coordinators

Within thirty (30) days of issuance of this Order, Aerovox shall designate a coordinator, who shall be responsible for

administration of studies called for by this Order, and shall submit the coordinator's name to EPA. EPA shall at the same time designate a coordinator for administration of its responsibilities and receipt of all written matter required by this Order.

2. Prior Approval; Emergency Action

Aerovox shall refrain from taking any action to abate the pollution which is the subject matter of this Order unless such action has been approved by EPA, provided, however, first, that abatement efforts begun before the issuance of this Order may continue pending review and approval by EPA, and second, that Aerovox may, if necessary, take reasonable measures to contain PCB materials if sudden or unexpected events have made prior consultation infeasible, under which circumstances Aerovox shall notify and consult with EPA as soon as reasonably possible.

3. Independent Consultants

All proposals, studies, and reports required by this Order to be submitted by Aerovox shall be prepared by an independent consultant or consultants, retained by Aerovox for the purpose of this Order.

4. Advance Notice and Split Samples

Aerovox shall provide notice to EPA of any excavating, drilling, or sampling to be conducted pursuant to this Order at least

five (5) working days in advance of the date of such excavating, drilling, or sampling, and Aerovox shall provide to EPA, upon prior request and to the extent feasible, a split of any sample taken pursuant to this Order. Aerovox and EPA and their respective consultants shall cooperate with each other, and each will provide to the other on request any relevant information (except for information exempt from disclosure) in its possession regarding the actions called for by this Order.

II. Sampling and Analysis

Upon issuance of this Order, Aerovox shall implement the approved sampling and analysis program attached to this Order as Appendix A. Aerovox shall complete the sampling and analysis program within ninety (90) days of receipt of the Order, according to the schedule included. At any time in the course of implementation, Aerovox or its consultants may confer with EPA concerning the program. At the conclusion of program, Aerovox shall submit the results in writing to EPA.

III. Evaluation of Alternative Responses

1. Within ninety (90) days after submission of the results of the sampling and analysis program, Aerovox shall submit to EPA an evaluation of alternative responses which shall be based on the results of the sampling and analysis program.

The evaluation shall assess the relative costs and benefits of alternative courses of remedial action, including, but not limited to, paving of the contaminated area, excavation and removal of contaminated material, and no action.

The evaluation shall include:

- i. an engineering analysis of each remedial course of action evaluated;
- ii. estimated costs and schedules for completion for each remedial course of action evaluated;
- iii. post-cleanup monitoring and maintenance measures for each course of action evaluated;
- iv. measures for provision of recorded notice to subsequent owners and operators of Aerovox' property and facilities of any measures taken for long term containment of PCBs on the property, and any related maintenance or monitoring required to assure continued implementation of such measures.

2. Recommendation

The evaluation shall include a recommendation from among the alternative courses of action evaluated.

3. Opportunity to Confer; Delays in Completion

At any time prior to approval of the evaluation, Aerovox and its consultants may confer with EPA respecting the evaluation. Aerovox shall inform EPA concerning any delays in completion of the study and inform EPA of the causes of such delays.

IV. Approval and Implementation of Recommended Course of Action

If EPA approves the course of action recommended in the evaluation, it shall so notify Aerovox in writing. Aerovox

shall thereupon implement the recommended course of action within the approved schedule.

1. Opportunity to Confer; Modification

At any time in the course of implementation Aerovox or its consultants may confer with EPA concerning the program.

Aerovox may request EPA approval of a modification, based on new information or changed circumstances of the measures and procedures previously approved. Such a request shall be implemented upon its approval; EPA shall provide approval or disapproval of requested modifications in writing for substantive modifications.

2. Progress Reports

While carrying out the approved course of action, Aerovox shall notify EPA of any failure to meet any date in the approved schedule, and of any other significant delays. In the event that the approved course of action takes longer than six months to complete, Aerovox shall report on its progress at the end of six months, and quarterly thereafter.

The report shall include a statement of the causes of such delays, the date by which the delayed elements of the study will be completed, and the effect on Aerovox' ability to meet the remaining schedule for completion.

3. Procedure in the Event of Disapproval

In the event that EPA does not approve the recommended course of action, or part thereof, as submitted by Aerovox, the

disapproval shall be in writing, shall state reasons for the disapproval, and may include requests for amendments or revisions.

Within thirty (30) days after receipt of any notice of disapproval, Aerovox shall submit a revised recommendation or shall state in writing the reasons why the recommendation, as originally submitted, should be approved. If within the 30 days (1) Aerovox has not submitted a revised recommendation and the disapproval has not been withdrawn, or (2) Aerovox has submitted a revised recommendation which has not been approved, EPA retains the right to require such further action as it deems necessary, by issuing further administrative orders or seeking judicial recourse, pursuant to its authority under Section 106 of CERCLA, 42 U.S.C. §9606, or any other relevant provision of law. Nothing in this Order shall be construed to limit Aerovox' right to contest any such further orders or judicial actions brought by EPA, or to require Aerovox to undertake any action not set forth in this Order or submitted by Aerovox in its recommendation or a revised recommendation.


IV. Confidentiality

Aerovox may, if it desires, assert a business confidentiality claim covering part or all of the information requested by this Order, in the manner described by 40 C.F.R. §2.203(b), 41 Fed. Reg. 36907 (September 1, 1976). Information covered by such a claim will be disclosed by EPA only to the extent,

and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B, 41 Fed. Reg. 36906-36918 (September 1, 1976).

If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to Aerovox. Aerovox should read the above-cited regulations carefully before asserting a business confidentiality claim, since certain categories are not properly the subject of such a claim.

Date: 5/17/82



Regional Administrator
Environmental Protection Agency

Date: 5-18-82

President
Aerovox, Inc.

Date: 5/20/82



Administrator
Environmental Protection Agency